

United States District Court  
District of Massachusetts

<p>TENNESSEE GAS PIPELINE COMPANY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL.</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil Action No.</p> <p>16-cv-11671-NMG</p>
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MEMORANDUM & ORDER

GORTON, J.

Plaintiff Tennessee Gas Pipeline Company ("Tennessee Gas" or "plaintiff") brought this action against the Massachusetts Department of Environmental Protection ("MassDEP"), the MassDEP Commissioner Martin Suuberg, 16 citizens of Massachusetts ("the Citizens") and Berkshire Environmental Action Team, Inc. ("BEAT"). Pending before the Court are plaintiff's motion for a preliminary injunction, defendant MassDEP's motion to stay and defendants Citizens and BEAT's motion to dismiss.

In March, 2016, the Federal Energy Regulatory Commission issued a certificate allowing plaintiff to expand its pipeline. In June, 2016, MassDEP disseminated a water quality certification for the expansion. On July 20, 2016, defendants Citizens and BEAT filed an appeal with MassDEP regarding its

certification. MassDEP has scheduled a hearing for the appeal on January 18, 2017.

On August 16, 2016, plaintiff filed a complaint in this Court requesting declaratory and injunctive relief to prevent MassDEP from asserting jurisdiction over the appeal. Plaintiff contends that, pursuant to the Natural Gas Act, United States Courts of Appeals have original and exclusive jurisdiction over such appeals. 15 U.S.C. § 717r(d)(1).

Thereafter, defendants Citizens and BEAT filed a petition for review of the MassDEP water quality certification in the First Circuit Court of Appeals. On September 2, 2016, the same defendants filed a motion for a stay of petition for review in the First Circuit Court of Appeals pending a final MassDEP decision, or, in the alternative, to dismiss the petition for review as premature. Defendants specifically request that the First Circuit Court of Appeals determine whether

(i) the Court has jurisdiction to consider this appeal at this time given ongoing MassDEP consideration; or (ii) the MassDEP has authority to review this matter and issue a final decision consistent with MassDEP's rules prior to any appellate review by this Court.

On September 12, 2016, defendants MassDEP and Commissioner Suuberg filed a motion to stay this case pending the resolution of the parallel petition before the First Circuit Court of Appeals. On the same day, defendants Citizens and BEAT filed a

motion to dismiss the case, or, alternatively, to stay it pending the decision of the First Circuit Court of Appeals.

The petition for appeal regarding the issues that are before this Court remains pending before the First Circuit Court of Appeals. Accordingly, this action is **STAYED** until 30 days after the First Circuit Court of Appeals rules on the petition, and counsel are directed to submit joint quarterly status reports in the meantime.

**So ordered.**

/s/ Nathaniel M. Gorton  
Nathaniel M. Gorton  
United States District Judge

Dated September 27, 2016